

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

HILDA L. SOLIS, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

CIVIL ACTION No.
2:09-cv-00988

v.

JOHN J. KORESKO, V, et al.,

Defendants.

CONSENT JUDGMENT WITH FARMERS & MERCHANTS TRUST
COMPANY OF CHAMBERSBURG

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor
("Secretary" or "Department"), filed a Complaint in this action in March 2009, and a Motion for
Leave to file a Supplemental Complaint in October 2012 (the 2009 Complaint and the 2012
Supplemental Complaint herein collectively referred to as the "Complaint") pursuant to the
Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*,
alleging certain violations by Community Trust Company ("CTC") in connection with its
responsibilities regarding certain employer sponsored prototype welfare plans participating under
the Regional Employers Assurance Leagues Voluntary Employees' Beneficiary Association
Health and Welfare Benefit Plan ("REAL VEBA Plans") and/or the Single Employer Welfare
Benefit Plan ("SEWBP Plans").

1. Farmers & Merchants Trust Company of Chambersburg, (hereinafter "F&M
Trust"), successor by merger to Community Trust Company, notwithstanding its Answer, and
without admitting or denying liability on its part related to the REAL VEBA Plans and/or the
SEWBP Plans, now consents to the entry of this Consent Judgment by the Court resolving all
outstanding civil claims and prayers for relief brought and sought by the Secretary arising out of
the Complaint or referenced in this Consent Judgment, the terms of which are set forth herein:

a. Defendant F&M Trust shall restore for the exclusive benefit of the ERISA-covered employee benefit plans that participated in the REAL VEBA Plans and/or SEWBP Plans the sum of \$175,000, to be placed in the Registry of the Court pending further Order of the Court. Defendant F&M Trust shall also pay \$17,500 as a penalty assessed under ERISA Section 502(1) in accordance with Paragraph 3(d) below.

b. Defendant F&M Trust shall transfer all funds it reserved from the corpus of the Trust for the REAL VEBA Plans or the Trust of the SEWBP Plans in response to the Order of this Court dated January 14, 2010 (Dkt. No. 195), and all earnings thereon, to the Registry of the Court for the benefit of the REAL VEBA Plans and/or SEWBP Plans, and said funds shall remain in the Registry of the Court pending further Order of the Court.

2. The Secretary and F&M Trust understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint or referred to in this Consent Judgment, including the Secretary's right to institute future enforcement actions with respect to any such matter. It is further understood that this paragraph shall not constitute a waiver by F&M Trust of any defenses, legal or equitable, to any such future action, or of any rights or remedies that it may have with respect to any other person or entity.

3. F&M Trust now consents to the entry of this Consent Judgment by the Court resolving all claims that were brought or could have been brought by the Secretary against CTC and/or F&M Trust for its services as trustee to the REAL VEBA Plans and/or the SEWBP Plans related to (i) the averments set forth in the Complaint which may or could give rise to liability against CTC and/or F&M Trust, (ii) F&M Trust's and/or CTC's receipt of 12b-1 and/or shareholder service fees, (iii) F&M Trust's and/or CTC's receipt of trustee fees and payment or reimbursement of its expenses, including attorney's fees, (iv) F&M Trust's withholding of moneys

as a reserve, following the January 14, 2010, Order herein denying the Secretary's Motion for Preliminary Injunction.

Accordingly, it is hereby ORDERED that:

- a. This Court has jurisdiction over this action and defendant F&M Trust.
- b. F&M Trust shall transfer the amount of \$175,000 to the Registry of the Court within ten (10) days of the entry of this Consent Judgment. This sum and all accrued earnings shall be held in an interest-bearing account in the Registry of the Court only for distribution to the ERISA-covered employee benefit plans that participated in the REAL VEBA Plans and/or SEWBP Plans and not to any of the Defendants. Such distribution shall occur only upon further Order of this Court.
- c. F&M Trust shall transfer all funds that it reserved from the corpus of the REAL VEBA Plans' Trust and/or SEWBP Plans' Trust following this Court's January 14, 2010, Order and all earnings thereon to the Registry of the Court within ten (10) days of this Consent Judgment for the benefit of the REAL VEBA Plans and/or the SEWBP Plans. This sum shall be held in the Registry of the Court pending further Order of this Court.
- d. Upon full payment of the amount set forth in paragraph 3(b) F&M Trust is hereby assessed a penalty of 20% of the applicable recovery amount (i.e., \$35,000) pursuant to ERISA § 502(1), 29 U.S.C. § 1132(1). The Secretary shall accept, as full satisfaction of the assessed penalty, payment by F&M Trust of a penalty of \$17,500 to the United States Department of Labor by forwarding a check or other instrument in that amount, within five (5) calendar days of full payment of the amount set forth in paragraph 3(b), to:

U.S. Department of Labor
ERISA - Civil Penalties
P.O. Box 71360
Philadelphia, PA 19176-1360

The check or other instrument shall be made payable to the "United States Department of Labor"

and shall reference EBSA Case No. 20-08679.

e. F&M Trust shall promptly produce documents and/or witnesses within its possession or under its control requested by the Secretary in conjunction with further litigation of this legal action without the necessity of service of subpoena or discovery requests, including requests for documents or witnesses for depositions, hearings or trial.

f. Defendant F&M Trust acknowledges its continuing responsibilities to abide by and comply with the provisions of ERISA.

g. This Consent Judgment is in full and final resolution of all claims that were brought or could have been brought by the Secretary against CTC and/or F&M Trust for its services as trustee to the REAL VEBA Plans and/or the SEWBP Plans related to (i) the averments set forth in the Complaint, (ii) F&M Trust's and/or CTC's receipt of 12b-1 and/or shareholder service fees, (iii) F&M Trust's and/or CTC's receipt of trustee fees and payment or reimbursement of its expenses, including attorney's fees, (iv) F&M Trust's withholding of moneys as a reserve, following the January 14, 2010, Order herein denying the Secretary's Motion for Preliminary Injunction.

h. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.

i. The Secretary and F&M Trust shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

j. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Judgment.

k. This Court directs the entry of this Consent Judgment as a final order.

Date: 11-27-12

Mary A. McLaughlin
Mary A. McLaughlin
United States District Judge

Defendant Farmers & Merchants
Trust Company of Chambersburg,
successor by merger to Community
Trust Company, consents to
the entry of this Consent Judgment:

Timothy J. Niehan
Timothy J. Niehan Attorney
for Defendant Farmers &
Merchants Trust Company
of Chambersburg

Plaintiff moves for the entry of this
Consent Judgment:

M. Patricia Smith
Solicitor of Labor

Catherine Oliver Murphy
Regional Solicitor

Joanne Roskey
Counsel for ERISA

William E. Sneyd, Jr.
Name: William E. Sneyd, Jr.

Title: President & CEO

Authorized Officer
Farmers & Merchants Trust
Company of Chambersburg

Linda M. Henry
Linda M. Henry
Ashton S. Phillips
Attorneys for Plaintiff
U.S. DEPARTMENT OF LABOR